

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KRISTINA KUCKER, SONNY URBINE,
HILLARY ANDERSON, MAGDA ALEXANDRA
SERENO, AMY DOIDGE, JILL FILIPPONE, and
HEATHER BRADSHAW, on behalf of themselves
and all others similarly situated,

Plaintiffs,

-against-

PETCO ANIMAL SUPPLIES STORES, INC.,

Defendant.

Case No. 14 Civ. 9983 (KPF)

ECF CASE

**DEFENDANT’S ANSWER AND
STATEMENT OF ADDITIONAL
AND AFFIRMATIVE DEFENSES**

Defendant PETCO ANIMAL SUPPLIES STORES, INC. (“Petco”), as and for its Answer to the “First Amended Class and Collective Action Complaint” (the “Amended Complaint”) filed by Plaintiffs KRISTINA KUCKER, SONNY URBINE, HILLARY ANDERSON, MAGDA ALEXANDRA SERENO, AMY DOIDGE, JILL FILIPPONE, and HEATHER BRADSHAW (collectively, “Plaintiffs”), states and alleges as follows:

INTRODUCTION

1. Petco denies the allegations set forth in Paragraph 1 of the Amended Complaint, except admits that it is a privately held chain of retail pet supplies and services stores with over 1,300 locations.
2. Petco denies the allegations set forth in Paragraph 2 of the Amended Complaint.
3. Petco denies the allegations set forth in Paragraph 3 of the Amended Complaint.
4. Petco denies the allegations set forth in Paragraph 4 of the Amended Complaint, except admits that Plaintiffs Anderson, Sereno, Doidge, Filippone, and Bradshaw purport to bring their Fair Labor Standards Act claims on a collective action basis, but denies any basis therefor.

5. Petco denies the allegations set forth in Paragraph 5 of the Amended Complaint, except admits that Plaintiffs Kucker and Urbine purport to bring their New York state claims on a class action basis, but denies any basis therefor. Petco further denies that they are adequate class representatives to assert a class action pursuant to the requirements of Fed R. Civ. P. 23, or that their claims can otherwise satisfy the requirements of a class action under Rule 23.

6. Petco denies the allegations set forth in Paragraph 6 of the Amended Complaint, except admits that Plaintiff Anderson purports to bring his California state claims on a class action basis, but denies any basis therefor. Petco further denies that she is an adequate class representative to assert a class action pursuant to the requirements of Fed R. Civ. P. 23, or that her claims can otherwise satisfy the requirements of a class action under Rule 23.

7. Petco denies the allegations set forth in Paragraph 7 of the Amended Complaint, except admits that Plaintiff Sereno purports to bring his Connecticut state claims on a class action basis, but denies any basis therefor. Petco further denies that his claims can satisfy the requirements of a class action under Fed. R. Civ. P. 23.

8. Petco denies the allegations set forth in Paragraph 8 of the Amended Complaint, except admits that Plaintiffs Doidge and Filippone purport to bring their New Jersey state claims on a class action basis, but denies any basis therefor. Petco further denies that their claims can satisfy the requirements of a class action under Fed. R. Civ. P. 23.

9. Petco denies the allegations set forth in Paragraph 9 of the Amended Complaint, except admits that Plaintiff Bradshaw purports to bring his Kansas state claims on a class action basis, but denies any basis therefor. Petco further denies that his claims can satisfy the requirements of a class action under Fed. R. Civ. P. 23.

THE PARTIES

Plaintiffs

Kristina Kucker

10. Petco denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 10 of the Amended Complaint.

11. Petco denies the allegations set forth in Paragraph 11 of the Amended Complaint, except admits that Plaintiff Kucker worked for Petco as a Pet Stylist from approximately January 2005 through January 2009 at the Petco store located at 86th Street and Lexington Avenue, New York, NY.

12. The allegations set forth in Paragraph 12 of the Amended Complaint constitute legal conclusions to which no response is required.

Sonny Urbine

13. Petco denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 13 of the Amended Complaint.

14. Petco denies the allegations set forth in Paragraph 14 of the Amended Complaint, except admits that Plaintiff Urbine worked for Petco as a Pet Stylist from approximately August 2009 through September 2010 at the Petco store located at 2601 86th Street, Brooklyn, NY.

15. The allegations set forth in Paragraph 15 of the Amended Complaint constitute legal conclusions to which no response is required.

Hillary Anderson

16. Petco denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 16 of the Amended Complaint.

17. Petco denies the allegations set forth in Paragraph 17 of the Amended Complaint, except admits that Plaintiff Anderson worked for Petco as a Pet Stylist at a Petco store located in Cerritos, California.

18. The allegations set forth in Paragraph 18 of the Amended Complaint constitute legal conclusions to which no response is required.

19. Petco denies the allegations set forth in Paragraph 19 of the Amended Complaint, except admits that Plaintiff Anderson filed a Consent to be a Party Plaintiff with the original Class Action Complaint.

Magda Alexandra Sereno

20. Petco denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 20 of the Amended Complaint.

21. Petco denies the allegations set forth in Paragraph 21 of the Amended Complaint, except admits that Plaintiff Sereno worked for Petco from approximately July 2011 through July 2014 at the store located in Windsor, Connecticut.

22. The allegations set forth in Paragraph 22 of the Amended Complaint constitute legal conclusions to which no response is required.

23. Petco denies the allegations set forth in Paragraph 23 of the Amended Complaint, except admits that Plaintiff Sereno filed a Consent to be a Party Plaintiff with the original Class Action Complaint.

Amy Doidge

24. Petco denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 24 of the Amended Complaint.

25. Petco denies the allegations set forth in Paragraph 25 of the Amended Complaint, except admits that Plaintiff Doidge worked for Petco as a Pet Stylist from approximately January 2013 through January 2014 at a Petco store located in Edison, New Jersey.

26. The allegations set forth in Paragraph 26 of the Amended Complaint constitute legal conclusions to which no response is required.

27. Petco denies the allegations set forth in Paragraph 27 of the Amended Complaint, except admits that Plaintiff Doidge filed a Consent to be a Party Plaintiff with the original Class Action Complaint.

Jill Filippone

28. Petco denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 28 of the Amended Complaint.

29. Petco denies the allegations set forth in Paragraph 29 of the Amended Complaint, except admits that Plaintiff Filippone worked for Petco as a Pet Stylist at a Petco store located in Phillipsburg, New Jersey.

30. The allegations set forth in Paragraph 30 of the Amended Complaint constitute legal conclusions to which no response is required.

31. Petco denies the allegations set forth in Paragraph 31 of the Amended Complaint, except admits that Plaintiff Filippone filed a Consent to be a Party Plaintiff with the original Class Action Complaint.

Heather Bradshaw

32. Petco denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 32 of the Amended Complaint.

33. Petco denies the allegations set forth in Paragraph 33 of the Amended Complaint, and avers that Plaintiff Bradshaw worked for Petco at a Petco store located in Salinas, Kansas.

34. The allegations set forth in Paragraph 34 of the Amended Complaint constitute legal conclusions to which no response is required.

35. Petco denies the allegations set forth in Paragraph 35 of the Amended Complaint, except admits that Plaintiff Bradshaw filed a Consent to be a Party Plaintiff with the original Class Action Complaint.

Defendant

Petco

36. Petco admits the allegations set forth in Paragraph 36 of the Amended Complaint.

37. The allegations set forth in Paragraph 37 of the Amended Complaint constitute legal conclusions to which no response is required.

38. Petco denies the allegations set forth in Paragraph 38 of the Amended Complaint, except admits that Petco set policies, including compensation policies, applicable to its employees.

JURISDICTION AND VENUE

39. The allegations set forth in Paragraph 39 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent a response is required, Petco: (a) admits that the Court has subject matter jurisdiction with respect to the federal claims alleged by Plaintiffs, but denies that there exists any basis in law or fact for such claims; (b) admits that the Court has supplemental jurisdiction over the state law claims of Plaintiffs Anderson, Sereno, Doidge, Fillipone, and Heather Bradshaw, but denies that there exists any basis in fact or law for

such claims; and (c) denies that the Court has supplemental jurisdiction over the claims of Plaintiffs Kucker and Urbine.

40. The allegations set forth in Paragraph 40 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent any response is required, Petco denies the allegations.

41. The allegations set forth in Paragraph 41 of the Amended Complaint constitute legal conclusions to which no response is required.

42. Petco denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 42 of the Amended Complaint.

43. Petco denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 43 of the Amended Complaint.

44. Petco denies the allegations set forth in Paragraph 44 of the Amended Complaint.

45. The allegations set forth in Paragraph 45 of the Amended Complaint constitute legal conclusions to which no response is required.

46. Petco denies the allegations set forth in Paragraph 46 of the Amended Complaint.

47. The allegations set forth in Paragraph 47 of the Amended Complaint constitute legal conclusions to which no response is required.

48. The allegations set forth in Paragraph 48 of the Amended Complaint constitute legal conclusions to which no response is required. To the extent any response is required, Petco denies the allegations.

49. The allegations set forth in Paragraph 49 of the Amended Complaint constitute legal conclusions to which no response is required.

NEW YORK CLASS ACTION ALLEGATIONS

50. Petco denies the allegations set forth in Paragraph 50 of the Amended Complaint. Petco specifically denies that Plaintiffs Kucker and Urbine can demonstrate the elements necessary for certification of a New York class pursuant to the requirements of Fed. R. Civ. P. 23.

51. No response is required. To the extent a response is required, Petco denies the allegations set forth in Paragraph 51 of the Amended Complaint, and specifically denies that Plaintiffs Kucker and Urbine can demonstrate the elements necessary for certification of a New York class pursuant to the requirements of Fed. R. Civ. P. 23.

52. Petco denies the allegations set forth in Paragraph 52 of the Amended Complaint.

53. Petco denies the allegations set forth in Paragraph 53 of the Amended Complaint.

54. Petco denies the allegations set forth in Paragraph 54 of the Amended Complaint.

55. Petco denies the allegations set forth in Paragraph 55 of the Amended Complaint, including each and every subpart thereto.

56. Petco denies the allegations set forth in Paragraph 56 of the Amended Complaint.

57. Petco denies the allegations set forth in Paragraph 57 of the Amended Complaint.

58. Petco denies the allegations set forth in Paragraph 58 of the Amended Complaint, except admits that Plaintiffs have retained competent counsel in the firm of Outten & Golden, LLP, and denies knowledge and information sufficient to form a belief as to the competence of their co-counsel.

59. Petco denies the allegations set forth in Paragraph 59 of the Amended Complaint.

60. Petco denies the allegations set forth in Paragraph 60 of the Amended Complaint.

CALIFORNIA CLASS ACTION ALLEGATIONS

61. Petco denies the allegations set forth in Paragraph 61 of the Amended Complaint.

62. No response is required. To the extent a response is required, Petco denies the allegations set forth in Paragraph 62 of the Amended Complaint.

63. Petco denies the allegations set forth in Paragraph 63 of the Amended Complaint.

64. Petco denies the allegations set forth in Paragraph 64 of the Amended Complaint.

65. Petco denies the allegations set forth in Paragraph 65 of the Amended Complaint.

66. Petco denies the allegations set forth in Paragraph 66 of the Amended Complaint including each and every one of the subparts thereto.

67. Petco denies the allegations set forth in Paragraph 67 of the Amended Complaint.

68. Petco denies the allegations set forth in Paragraph 68 of the Amended Complaint.

69. Petco denies the allegations set forth in Paragraph 69 of the Amended Complaint.

70. Petco denies the allegations set forth in Paragraph 70 of the Amended Complaint.

71. Petco denies the allegations set forth in Paragraph 71 of the Amended Complaint.

CONNECTICUT CLASS ACTION ALLEGATIONS

72. Petco denies the allegations set forth in Paragraph 72 of the Amended Complaint.

73. No response is required. To the extent a response is required, Petco denies the allegations set forth in Paragraph 73 of the Amended Complaint.

74. Petco denies the allegations set forth in Paragraph 74 of the Amended Complaint.

75. Petco denies the allegations set forth in Paragraph 75 of the Amended Complaint.

76. Petco denies the allegations set forth in Paragraph 76 of the Amended Complaint.

77. Petco denies the allegations set forth in Paragraph 77 of the Amended Complaint including each and every subpart thereto.

78. Petco denies the allegations set forth in Paragraph 78 of the Amended Complaint.

79. Petco denies the allegations set forth in Paragraph 79 of the Amended Complaint.

80. Petco denies the allegations set forth in Paragraph 80 of the Amended Complaint.

81. Petco denies the allegations set forth in Paragraph 81 of the Amended Complaint.

82. Petco denies the allegations set forth in Paragraph 82 of the Amended Complaint.

NEW JERSEY CLASS ACTION ALLEGATIONS

83. Petco denies the allegations set forth in Paragraph 83 of the Amended Complaint.

84. No response is required. To the extent a response is required, Petco denies the allegations set forth in Paragraph 84 of the Amended Complaint.

85. Petco denies the allegations set forth in Paragraph 85 of the Amended Complaint.

86. Petco denies the allegations set forth in Paragraph 86 of the Amended Complaint.

87. Petco denies the allegations set forth in Paragraph 87 of the Amended Complaint.

88. Petco denies the allegations set forth in Paragraph 88 of the Amended Complaint including each and every subpart thereto.

89. Petco denies the allegations set forth in Paragraph 89 of the Amended Complaint.

90. Petco denies the allegations set forth in Paragraph 90 of the Amended Complaint.

91. Petco denies the allegations set forth in Paragraph 91 of the Amended Complaint.

92. Petco denies the allegations set forth in Paragraph 92 of the Amended Complaint.

93. Petco denies the allegations set forth in Paragraph 93 of the Amended Complaint.

KANSAS CLASS ACTION ALLEGATIONS

94. Petco denies the allegations set forth in Paragraph 94 of the Amended Complaint.

95. No response is required. To the extent a response is required, Petco denies the allegations set forth in Paragraph 95 of the Amended Complaint.

96. Petco denies the allegations set forth in Paragraph 96 of the Amended Complaint.

97. Petco denies the allegations set forth in Paragraph 97 of the Amended Complaint.

98. Petco denies the allegations set forth in Paragraph 98 of the Amended Complaint.

99. Petco denies the allegations set forth in Paragraph 99 of the Amended Complaint including each and every subpart thereto.

100. Petco denies the allegations set forth in Paragraph 100 of the Amended Complaint.

101. Petco denies the allegations set forth in Paragraph 101 of the Amended Complaint.

102. Petco denies the allegations set forth in Paragraph 102 of the Amended Complaint.

103. Petco denies the allegations set forth in Paragraph 103 of the Amended Complaint.

104. Petco denies the allegations set forth in Paragraph 104 of the Amended Complaint.

COLLECTIVE ACTION ALLEGATIONS

105. Petco denies the allegations set forth in Paragraph 105 of the Amended Complaint.

106. Petco denies the allegations set forth in Paragraph 106 of the Amended Complaint.

CLASS-WIDE FACTUAL ALLEGATIONS

107. Petco denies the allegations set forth in Paragraph 107 of the Amended Complaint.

108. Petco denies the allegations set forth in Paragraph 108 of the Amended Complaint.

109. Petco denies the allegations set forth in Paragraph 109 of the Amended Complaint.

110. Petco denies the allegations set forth in Paragraph 110 of the Amended Complaint.

111. Petco denies the allegations set forth in Paragraph 111 of the Amended Complaint.

112. Petco denies the allegations set forth in Paragraph 112 of the Amended Complaint.

113. Petco denies the allegations set forth in Paragraph 113 of the Amended Complaint.

114. Petco denies the allegations set forth in Paragraph 114 of the Amended Complaint.

115. Petco denies the allegations set forth in Paragraph 115 of the Amended Complaint.

PLAINTIFFS' FACTUAL ALLEGATIONS

116. Petco denies the allegations set forth in Paragraph 116 of the Amended Complaint.

Kristina Kucker

117. Petco admits the allegations set forth in Paragraph 117 of the Amended Complaint.

118. Petco denies the allegations set forth in Paragraph 118 of the Amended Complaint.

119. Petco denies the allegations set forth in Paragraph 119 of the Amended Complaint.

120. Petco denies the allegations set forth in Paragraph 120 of the Amended Complaint.

121. Petco denies the allegations set forth in Paragraph 121 of the Amended Complaint.

122. Petco denies the allegations set forth in Paragraph 122 of the Amended Complaint.

123. Petco denies the allegations set forth in Paragraph 123 of the Amended Complaint.

124. Petco denies the allegations set forth in Paragraph 124 of the Amended Complaint.

125. Petco denies the allegations set forth in Paragraph 125 of the Amended Complaint.

126. Petco denies the allegations set forth in Paragraph 126 of the Amended Complaint.

127. Petco denies the allegations set forth in Paragraph 127 of the Amended Complaint.

128. Petco denies the allegations set forth in Paragraph 128 of the Amended Complaint.

Sonny Urbine

129. Petco admits the allegations set forth in Paragraph 129 of the Amended Complaint.

130. Petco denies the allegations set forth in Paragraph 130 of the Amended Complaint.

131. Petco denies the allegations set forth in Paragraph 131 of the Amended Complaint.

132. Petco denies the allegations set forth in Paragraph 132 of the Amended Complaint.

133. Petco denies the allegations set forth in Paragraph 133 of the Amended Complaint.

134. Petco denies the allegations set forth in Paragraph 134 of the Amended Complaint.

135. Petco denies the allegations set forth in Paragraph 135 of the Amended Complaint.

136. Petco denies the allegations set forth in Paragraph 136 of the Amended Complaint.

137. Petco denies the allegations set forth in Paragraph 137 of the Amended Complaint.

138. Petco denies the allegations set forth in Paragraph 138 of the Amended Complaint.

139. Petco denies the allegations set forth in Paragraph 139 of the Amended Complaint.

140. Petco denies the allegations set forth in Paragraph 140 of the Amended Complaint.

141. Petco denies the allegations set forth in Paragraph 141 of the Amended Complaint.

142. Petco denies the allegations set forth in Paragraph 142 of the Amended Complaint.

Hillary Anderson

143. Petco denies the allegations set forth in Paragraph 143 of the Amended Complaint.

144. Petco denies the allegations set forth in Paragraph 144 of the Amended Complaint.

145. Petco denies the allegations set forth in Paragraph 145 of the Amended Complaint.

146. Petco denies the allegations set forth in Paragraph 146 of the Amended Complaint.

147. Petco denies the allegations set forth in Paragraph 147 of the Amended Complaint.

148. Petco denies the allegations set forth in Paragraph 148 of the Amended Complaint.

149. Petco denies the allegations set forth in Paragraph 149 of the Amended Complaint.

150. Petco denies the allegations set forth in Paragraph 150 of the Amended Complaint.

151. Petco denies the allegations set forth in Paragraph 151 of the Amended Complaint.

152. Petco denies the allegations set forth in Paragraph 152 of the Amended Complaint.

153. Petco denies the allegations set forth in Paragraph 153 of the Amended Complaint.

154. Petco denies the allegations set forth in Paragraph 154 of the Amended Complaint.

155. Petco denies the allegations set forth in Paragraph 155 of the Amended Complaint.

156. Petco denies the allegations set forth in Paragraph 156 of the Amended Complaint.

157. Petco denies the allegations set forth in Paragraph 157 of the Amended Complaint.

158. Petco denies the allegations set forth in Paragraph 158 of the Amended Complaint.

Magda Alexandra Sereno

159. Petco denies the allegations set forth in Paragraph 159 of the Amended Complaint.

160. Petco denies the allegations set forth in Paragraph 160 of the Amended Complaint.

161. Petco denies the allegations set forth in Paragraph 161 of the Amended Complaint.

162. Petco denies the allegations set forth in Paragraph 162 of the Amended Complaint.

163. Petco denies the allegations set forth in Paragraph 163 of the Amended Complaint.

164. Petco denies the allegations set forth in Paragraph 164 of the Amended Complaint.

165. Petco denies the allegations set forth in Paragraph 165 of the Amended Complaint.

166. Petco denies the allegations set forth in Paragraph 166 of the Amended Complaint.

167. Petco denies the allegations set forth in Paragraph 167 of the Amended Complaint.

168. Petco denies the allegations set forth in Paragraph 168 of the Amended Complaint.

169. Petco denies the allegations set forth in Paragraph 169 of the Amended Complaint.

170. Petco denies the allegations set forth in Paragraph 170 of the Amended Complaint.

Amy Doidge

171. Petco denies the allegations set forth in Paragraph 171 of the Amended Complaint.

172. Petco denies the allegations set forth in Paragraph 172 of the Amended Complaint.

173. Petco denies the allegations set forth in Paragraph 173 of the Amended Complaint.

174. Petco denies the allegations set forth in Paragraph 174 of the Amended Complaint.

175. Petco denies the allegations set forth in Paragraph 175 of the Amended Complaint.

176. Petco denies the allegations set forth in Paragraph 176 of the Amended Complaint.

177. Petco denies the allegations set forth in Paragraph 177 of the Amended Complaint.

178. Petco denies the allegations set forth in Paragraph 178 of the Amended Complaint.

179. Petco denies the allegations set forth in Paragraph 179 of the Amended Complaint.

180. Petco denies the allegations set forth in Paragraph 180 of the Amended Complaint.

181. Petco denies the allegations set forth in Paragraph 181 of the Amended Complaint.

182. Petco denies the allegations set forth in Paragraph 182 of the Amended Complaint.

Jill Filippone

183. Petco denies the allegations set forth in Paragraph 183 of the Amended Complaint.

184. Petco denies the allegations set forth in Paragraph 184 of the Amended Complaint.

185. Petco denies the allegations set forth in Paragraph 185 of the Amended Complaint.

186. Petco denies the allegations set forth in Paragraph 186 of the Amended Complaint.

187. Petco denies the allegations set forth in Paragraph 187 of the Amended Complaint.

188. Petco denies the allegations set forth in Paragraph 188 of the Amended Complaint.

189. Petco denies the allegations set forth in Paragraph 189 of the Amended Complaint.

190. Petco denies the allegations set forth in Paragraph 190 of the Amended Complaint.

191. Petco denies the allegations set forth in Paragraph 191 of the Amended Complaint.

192. Petco denies the allegations set forth in Paragraph 192 of the Amended Complaint.

193. Petco denies the allegations set forth in Paragraph 193 of the Amended Complaint.

194. Petco denies the allegations set forth in Paragraph 194 of the Amended Complaint.

195. Petco denies the allegations set forth in Paragraph 195 of the Amended Complaint.

196. Petco denies the allegations set forth in Paragraph 196 of the Amended Complaint.

Heather Bradshaw

197. Petco denies the allegations set forth in Paragraph 197 of the Amended Complaint.

198. Petco denies the allegations set forth in Paragraph 198 of the Amended Complaint.

199. Petco denies the allegations set forth in Paragraph 199 of the Amended Complaint.

200. Petco denies the allegations set forth in Paragraph 200 of the Amended Complaint.

201. Petco denies the allegations set forth in Paragraph 201 of the Amended Complaint.

202. Petco denies the allegations set forth in Paragraph 202 of the Amended Complaint.

203. Petco denies the allegations set forth in Paragraph 203 of the Amended Complaint.

204. Petco denies the allegations set forth in Paragraph 204 of the Amended Complaint.

205. Petco denies the allegations set forth in Paragraph 205 of the Amended Complaint.

206. Petco denies the allegations set forth in Paragraph 206 of the Amended Complaint.

207. Petco denies the allegations set forth in Paragraph 207 of the Amended Complaint.

208. Petco denies the allegations set forth in Paragraph 208 of the Amended Complaint.

209. Petco denies the allegations set forth in Paragraph 209 of the Amended Complaint.

FIRST CAUSE OF ACTION

Fair Labor Standards Act – Minimum Wage

(Brought on brought on behalf of Plaintiffs Anderson, Sereno, Doidge, Filippone, and Bradshaw on Behalf of Themselves and the Groomer Collective)

210. Petco repeats and realleges its responses to Paragraphs 1 through 209 of the Complaint as if each were fully set forth herein.

211. Petco denies the allegations set forth in Paragraph 211 of the Amended Complaint.

212. Petco denies the allegations set forth in Paragraph 212 of the Amended Complaint.

213. The allegations set forth in Paragraph 213 of the Amended Complaint constitute legal conclusions to which no response is required.

214. The allegations set forth in Paragraph 214 of the Amended Complaint constitute legal conclusions to which no response is required.

215. Petco denies the allegations set forth in Paragraph 215 of the Amended Complaint.

216. Petco denies the allegations set forth in Paragraph 216 of the Amended Complaint.

217. Petco denies the allegations set forth in Paragraph 217 of the Amended Complaint.

218. Petco denies the allegations set forth in Paragraph 218 of the Amended Complaint.

219. Petco denies the allegations set forth in Paragraph 219 of the Amended Complaint.

220. Petco denies the allegations set forth in Paragraph 220 of the Amended Complaint.

221. Petco denies the allegations set forth in Paragraph 221 of the Amended Complaint.

222. Petco denies the allegations set forth in Paragraph 222 of the Amended Complaint.

SECOND CAUSE OF ACTION
NYLL, ARTICLE 19, §§650 *et seq.* – Minimum Wages
(Brought by the New York Plaintiffs on Behalf of
Themselves and the New York Class members

223. Petco repeats and realleges its responses to Paragraphs 1 through 222 of the Complaint as if each were fully set forth herein.

224. Petco denies the allegations set forth in Paragraph 224 of the Amended Complaint.

225. Petco denies the allegations set forth in Paragraph 225 of the Amended Complaint.

226. The allegations set forth in Paragraph 226 of the Amended Complaint constitute legal conclusions to which no response is required.

227. The allegations set forth in Paragraph 227 of the Amended Complaint constitute legal conclusions for which no response is required.

228. Petco denies the allegations set forth in Paragraph 228 of the Amended Complaint and specifically refers the Court to the laws cited for their full content and form.

229. Petco denies the allegations set forth in Paragraph 229 of the Amended Complaint.

230. Petco denies the allegations set forth in Paragraph 230 of the Amended Complaint.

231. Petco denies the allegations set forth in Paragraph 231 of the Amended Complaint.

232. Petco denies the allegations set forth in Paragraph 232 of the Amended Complaint.

THIRD CAUSE OF ACTION
NYLL, ARTICLE 6, §§190 *et seq.* – Unlawful Deductions
(Brought by the New York Plaintiffs on Behalf of
Themselves and the New York Class members

233. Petco repeats and realleges its responses to Paragraphs 1 through 232 of the Complaint as if each were fully set forth herein.

234. Petco denies the allegations set forth in Paragraph 234 of the Amended Complaint.

235. Petco denies the allegations set forth in Paragraph 235 of the Amended Complaint.

FOURTH CAUSE OF ACTION
N.Y. Comp. Code r. & Regs. Tit. 12, §146-2.7-
Equipment Purchase and Maintenance
(Brought by the New York Plaintiffs on Behalf of
Themselves and the New York Class Members

236. Petco repeats and realleges its responses to Paragraphs 1 through 235 of the Complaint as if each were fully set forth herein.

237. Petco denies the allegations set forth in Paragraph 237 of the Amended Complaint.

238. Petco denies the allegations set forth in Paragraph 238 of the Amended Complaint.

239. Petco denies the allegations set forth in Paragraph 239 of the Amended Complaint.

FIFTH CAUSE OF ACTION
Cal. Labor Code §§ 1194, 1194.2, 1197.1 – Minimum Wage
(Brought by Plaintiff Anderson on Behalf of
Themselves and the California Class Members)

240. Petco repeats and realleges its responses to Paragraphs 1 through 239 of the Complaint as if each were fully set forth herein.

241. Petco denies the allegations set forth in Paragraph 241 of the Amended Complaint.

242. Petco denies the allegations set forth in Paragraph 242 of the Amended Complaint.

243. Petco denies the allegations set forth in Paragraph 243 of the Amended Complaint.

244. Petco denies the allegations set forth in Paragraph 244 of the Amended Complaint.

245. Petco denies the allegations set forth in Paragraph 245 of the Amended Complaint.

246. Petco denies the allegations set forth in Paragraph 246 of the Amended Complaint.

247. Petco denies the allegations set forth in Paragraph 247 of the Amended Complaint.

SIXTH CAUSE OF ACTION

**Cal. Labor Code §§ 201, 202 & 203 – Wage Payment Provisions
(Brought by Plaintiff Anderson on Behalf of
Herself and the California Class Members)**

248. Petco repeats and realleges its responses to Paragraphs 1 through 247 of the Complaint as if each were fully set forth herein.

249. Petco denies the allegations set forth in Paragraph 249 of the Amended Complaint and specifically refers the Court to the laws cited for their full content and form.

250. Petco denies the allegations set forth in Paragraph 250 of the Amended Complaint and specifically refers the Court to the laws cited for their full content and form.

251. Petco denies the allegations set forth in Paragraph 251 of the Amended Complaint.

252. Petco denies the allegations set forth in Paragraph 252 of the Amended Complaint.

253. Petco admits the allegations of Paragraph 253 as to Plaintiff Anderson, and denies knowledge and information sufficient to form a belief as to the truth or falsity of the allegations set forth in Paragraph 253 of the Amended Complaint regarding unspecified members of the purported class.

254. Petco denies the allegations set forth in Paragraph 254 of the Amended Complaint.

SEVENTH CAUSE OF ACTION

**Cal. Labor Code §§ 226, 1174, & 1174.5 – California Record Keeping Provisions
(Brought By Plaintiff Anderson on Behalf of
Herself and the California Class Members)**

255. Petco repeats and realleges its responses to Paragraphs 1 through 254 of the Complaint as if each were fully set forth herein.

256. Petco denies the allegations set forth in Paragraph 256 of the Amended Complaint.

257. Petco denies the allegations set forth in Paragraph 257 of the Amended Complaint.

258. Petco denies the allegations set forth in Paragraph 258 of the Amended Complaint.

259. Petco denies the allegations set forth in Paragraph 259 of the Amended Complaint.

EIGHTH CAUSE OF ACTION

**California Labor Code § 2802 – Failure to Reimburse Expenses
(Brought by Plaintiff Anderson on Behalf of
Herself and the California Class Members)**

260. Petco repeats and realleges its responses to Paragraphs 1 through 259 of the Complaint as if each were fully set forth herein.

261. Petco denies the allegations set forth in Paragraph 261 of the Amended Complaint.

262. Petco denies the allegations set forth in Paragraph 262 of the Amended Complaint.

263. Petco denies the allegations set forth in Paragraph 263 of the Amended Complaint.

NINTH CAUSE OF ACTION

**Cal. Bus. & Prof. code §§ 17200 *et seq.* – California Competition Law
(Brought by Plaintiff Anderson on Behalf of
Herself and the California Class Members)**

264. Petco repeats and realleges its responses to Paragraphs 1 through 263 of the Complaint as if each were fully set forth herein.

265. Petco denies the allegations set forth in Paragraph 265 of the Amended Complaint.

266. Petco denies the allegations set forth in Paragraph 266 of the Amended Complaint.

267. Petco denies the allegations set forth in Paragraph 267 of the Amended Complaint.

268. Petco denies the allegations set forth in Paragraph 268 of the Amended Complaint, including subparts thereto.

269. Petco denies the allegations set forth in Paragraph 269 of the Amended Complaint.

270. Petco denies the allegations set forth in Paragraph 270 of the Amended Complaint.

271. Petco denies that Plaintiffs are entitled to any of the relief listed in Paragraph 271 of the Amended Complaint.

TENTH CAUSE OF ACTION

**Ca. Labor Code §§ 2698-2699.5 – PAGA claims for Civil Penalties
(Brought by Plaintiff Anderson on Behalf of
Herself and California Class Members)**

272. Petco repeats and realleges its responses to Paragraphs 1 through 271 of the Complaint as if each were fully set forth herein.

273. Petco denies the allegations set forth in Paragraph 273 of the Amended Complaint and specifically refers the Court to the laws cited for their full content and form.

274. Petco denies the allegations set forth in Paragraph 274 of the Amended Complaint.

275. Petco denies the allegations set forth in Paragraph 275 of the Amended Complaint.

276. Petco denies the allegations set forth in Paragraph 276 of the Amended Complaint, and specifically refers the Court to the laws cited for their full content and form.

277. Petco denies the allegations set forth in Paragraph 277 of the Amended Complaint and specifically refers the Court to the laws cited for their full content and form.

278. Petco denies the allegations set forth in Paragraph 278 of the Amended Complaint.

279. Petco denies the allegations set forth in Paragraph 279 of the Amended Complaint.

280. Petco denies the allegations set forth in Paragraph 280 of the Amended Complaint.

ELEVENTH CAUSE OF ACTION

**Conn. Gen. Stat. §§ 31-58 *et seq.* – Minimum Wages
(Brought by Plaintiff Sereno on Behalf of
Herself and the Connecticut Class Members)**

281. Petco repeats and realleges its responses to Paragraphs 1 through 280 of the Complaint as if each were fully set forth herein.

282. Petco denies the allegations set forth in Paragraph 282 of the Amended Complaint.

283. Petco denies the allegations set forth in Paragraph 283 of the Amended Complaint.

284. The allegations set forth in Paragraph 284 of the Amended Complaint constitute legal conclusions to which no response is required.

285. Petco denies the allegations set forth in Paragraph 285 of the Amended Complaint.

286. Petco denies the allegations set forth in Paragraph 286 of the Amended Complaint and specifically refers the Court to the laws cited for their full content and form.

287. Petco denies the allegations set forth in Paragraph 287 of the Amended Complaint.

288. Petco denies the allegations set forth in Paragraph 288 of the Amended Complaint.

289. Petco denies the allegations set forth in Paragraph 289 of the Amended Complaint.

290. Petco denies the allegations set forth in Paragraph 290 of the Amended Complaint.

TWELFTH CAUSE OF ACTION

**Conn. Gen. Stat. § 31-71e – Withholding of Part of Wages
(Brought by Plaintiff Sereno on Behalf of
Herself and the Connecticut class Members)**

291. Petco repeats and realleges its responses to Paragraphs 1 through 290 of the Complaint as if each were fully set forth herein.

292. Petco denies the allegations set forth in Paragraph 292 of the Amended Complaint.

293. Petco denies the allegations set forth in Paragraph 293 of the Amended Complaint.

294. Petco denies the allegations set forth in Paragraph 294 of the Amended Complaint.

295. Petco denies the allegations set forth in Paragraph 295 of the Amended Complaint.

296. Petco denies the allegations set forth in Paragraph 296 of the Amended Complaint.

297. Petco denies the allegations set forth in Paragraph 297 of the Amended Complaint.

AS TO THE THIRTEENTH CAUSE OF ACTION

**N.J.S.A. § 34:11-56A, *et seq.* – Minimum Wages
(Brought by Plaintiffs Filippone and Doidge on Behalf of
Themselves and the New Jersey Class Members)**

298. Petco repeats and realleges its responses to Paragraphs 1 through 297 of the Complaint as if each were fully set forth herein.

299. Petco denies the allegations set forth in Paragraph 299 of the Amended Complaint.

300. Petco denies the allegations set forth in Paragraph 300 of the Amended Complaint.

301. The allegations set forth in Paragraph 301 of the Amended Complaint constitute legal conclusions to which no response is required.

302. Petco denies the allegations set forth in Paragraph 302 of the Amended Complaint.

303. Petco denies the allegations set forth in Paragraph 303 of the Amended Complaint and specifically refers the Court to the laws cited for their full content and form.

304. Petco denies the allegations set forth in Paragraph 304 of the Amended Complaint.

305. Petco denies the allegations set forth in Paragraph 305 of the Amended Complaint.

306. Petco denies the allegations set forth in Paragraph 306 of the Amended Complaint.

307. Petco denies the allegations set forth in Paragraph 307 of the Amended Complaint.

AS TO THE FOURTEENTH CAUSE OF ACTION
Kansas Wage Payment Act, K.S.A. §44-313, *et seq.*
(Brought by Plaintiff Bradshaw on Behalf of
Herself and the Kansas Class Members)

308. Petco repeats and realleges its responses to Paragraphs 1 through 307 of the Complaint as if each were fully set forth herein.

309. Petco denies the allegations set forth in Paragraph 309 of the Amended Complaint.

310. Petco denies the allegations set forth in Paragraph 310 of the Amended Complaint.

311. Petco denies the allegations set forth in Paragraph 311 of the Amended Complaint.

312. Petco denies the allegations set forth in Paragraph 312 of the Amended Complaint.

313. Petco denies the allegations set forth in Paragraph 313 of the Amended Complaint.

THE REQUEST FOR RELIEF

Petco denies that Plaintiffs are entitled to any of the relief requested in the Request for Relief, or any of its subparts, or to any relief at all, against Petco.

DEMAND FOR TRIAL BY JURY

The allegations set forth in the Jury Demand of the Amended Complaint constitute legal conclusions to which no response is required.

DEFENSES

Petco asserts the following defenses and/or affirmative defenses, without assuming any burden of proof that otherwise does not exist as a matter of law. **These defenses apply to the claims of some or all of the collective and/or class of allegedly similarly situated persons, if collective and/or class certification is granted.**

1. The Amended Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

2. The Amended Complaint fails to state a claim upon which prejudgment interest may be granted.

3. To the extent that any period of time alleged in Plaintiffs' Amended Complaint, or the period of time alleged later in this action, predates the limitations period set forth in the Fair Labor Standards Act ("FLSA"), any applicable state law, and/or by principles of laches, such claims are barred.

4. Petco's actions were not willful. No act or omission of Petco, which is alleged to violate the FLSA and/or applicable state law, was willful, knowing, or in reckless disregard for the provisions of the FLSA and/or the applicable state law.

5. Petco, at all times, acted in good faith to comply with the FLSA and the applicable state laws, and with reasonable grounds to believe that its actions did not violate the laws cited in the Amended Complaint, and so, Petco asserts good faith as a defense to any claim by Plaintiffs for liquidated damages.

6. Plaintiffs' claims are barred, in whole or in part, because any acts or omissions giving rise to this action were done in good faith, in conformity with and reliance upon written administrative regulations, orders, rulings, approvals, interpretations, and/or written and unwritten administrative practices or enforcement policies of the United States Department of Labor and/or the applicable state agencies and/or departments of labor, and/or with reasonable grounds for believing that the actions or omissions were not a violation of the FLSA or the applicable state laws.

7. Plaintiffs' claims are barred, in whole or in part, by the doctrine of accord and satisfaction, waiver, laches, estoppel, comparative fault, contributory fault, and/or the applicable statute of limitations.

8. Plaintiffs' claims are barred to the extent any or all of the Plaintiffs failed, refused, and/or neglected to mitigate or avoid the damages complained of in the Amended Complaint, if any.

9. If Plaintiffs succeed in establishing any violation under the FLSA or the applicable state laws, and to the extent any sums are found due and owing to Plaintiffs, Petco is entitled to a set-off against said sum to the extent paid, tendered, waived, compromised, and/or released prior to the adjudication herein, including but not limited to those amounts paid, tendered, waived, compromised, and/or released through any other proceeding, either formal or informal, or to the extent any additional compensation was paid to Plaintiffs over and above their wages.

10. Plaintiffs' claims are barred or should be reduced, in whole or in part, by exclusions, exceptions, credits, recoupments, or offsets permissible under the FLSA or applicable state laws.

11. Any claim for additional compensation by Plaintiffs must be reduced by compensation already paid to Plaintiffs for periods not compensable under the FLSA and the applicable state laws.

12. Plaintiffs' claims are barred, in whole or in part, to the extent they are seeking compensation for hours during which they were engaged in activities that were preliminary or postliminary to principal activities.

13. Plaintiffs' claims are barred, in whole or in part, to the extent any violations are established, they constitute *de minimis* violations.

14. Plaintiffs are not entitled to any equitable relief because they have an adequate remedy at law.

15. To the extent discovery reveals that Plaintiffs falsely reported their hours or wages, Petco hereby invokes the doctrine of estoppel to bar the claims and/or reduce the damages asserted by Plaintiffs.

16. Plaintiffs' claims pertaining to alleged unpaid work time for non-overtime hours fails in any workweek in which Plaintiffs' total compensation for the week exceeds the minimum wage for all non-overtime hours worked that week.

17. There are no employees who are similarly situated to Plaintiffs, as that term is defined and/or interpreted under the FLSA, 29 U.S.C. § 216(b).

18. Plaintiffs cannot satisfy the requirements for a class action under Federal Rule of Civil Procedure 23 because, among other things, (1) Plaintiffs are unable to meet the requirements of numerosity, typicality, and/or commonality, (2) individual questions of law or fact predominate over any common questions, and/or (3) a class action is not superior to other available methods for fairly and efficiently adjudicating the claims of putative class members.

19. The Amended Complaint's class allegations should be dismissed because independent and individual analyses of Plaintiffs and the putative class members' claims and Petco's defenses to such claims are required.

20. Certification of a class, as applied to the facts and circumstances of this case, would constitute a denial of Petco's procedural rights and to substantive and procedural due process, in violation of the Fourteenth Amendment of the United States Constitution.

21. Class relief is not appropriate because one or more individuals who wish to serve as a class representative has interests that may conflict with the interests of the putative class.

22. Plaintiffs and the putative class members' claims are barred to the extent that Plaintiffs lacks standing to bring them. In particular, Plaintiffs, as former employees, lack

standing to represent the putative class of current employees because they cannot seek injunctive relief. For these and other reasons, Plaintiffs are inadequate class representatives as well.

23. Plaintiffs and the putative class members are exempt from the minimum wage and/or overtime requirements of the FLSA and applicable state law to the extent that they are exempt under the FLSA's Section 7(i) retail service establishment exemption and/or similar commissions and/or sales-based state law exemption.

24. All or portions of Plaintiffs' California state claims are barred by applicable statute of limitations, including but not limited to Code of Civil Procedure sections 337, 338(a), 339, 340(a), 343, California Labor Code section 203, and Business and Professions Code section 17208.

25. Plaintiffs cannot recover penalties, attorney's fees or other monetary remedies for their California state claims under Business and Professions Code section 17200, *et seq.*

26. Petco's business practices were not "unfair," "unlawful," or "deceptive" within the meaning of California Business and Professions Code sections 17200 *et seq.*

27. Any claim for liquidated damages or waiting time penalties is barred because Petco at all times acted in good faith and had reasonable grounds for believing that it was in compliance with California state law. Petco did not willfully or intentionally fail to pay wages.

28. Even assuming that Plaintiffs and/or the putative class members were not provided with a proper itemized wage statement, Plaintiffs and/or the putative class members are not entitled to recover damages/penalties because Petco's alleged failure to comply with applicable state law was not a "knowing and intentional" failure and/or because Plaintiffs and/or the putative class members did not suffer any actual injury.

29. Plaintiffs failed to timely, adequately and properly exhaust the administrative prerequisites required to pursue some or all of the California state claims alleged, including but not limited to the requirements of California Labor Code section 2699. 3(a)(1).

30. Prosecution of a class action, collective action and/or representative action and/or a claim for penalties under the Private Attorney General Act (California Labor Code section 2699 et al.), under the facts and circumstances of this case, would constitute a denial of Petco's due process rights, both substantive and procedural, in violation of the Constitution of the State of California and the Constitution of the United States, including the Fourteenth Amendment.

31. All or some of the expenses allegedly incurred by Plaintiffs and the putative class members were not necessarily incurred.

32. Petco allege that all or some of the expenses allegedly incurred by Plaintiffs and the putative class members would have been otherwise incurred regardless of their employment by Petco.

33. The claims of the purported California class are moot and/or are barred, in whole or in part, by the doctrines of accord and satisfaction.

34. The claims of some or all Plaintiffs are barred, in whole or in part, because they bring this action with unclean hands.

34. Pending the conclusion of further discovery and investigation, Petco respectfully reserves the right to add such further or supplemental defenses as may be warranted by the information developed through discovery and proper to the full defense of this litigation.

WHEREFORE, Petco respectfully requests the Court grant the following relief: (1) judgment be entered dismissing Plaintiffs' Amended Complaint on the merits and with prejudice;

(2) award Petco its attorneys' fees, costs, and disbursements, as appropriate; and (3) direct such other relief as the Court deems just and equitable.

Date: March 18, 2015
New York, New York

/s/ Stephen A. Fuchs

Stephen A. Fuchs
Christine L. Hogan
LITTLER MENDELSON, P.C.
900 Third Avenue
New York, NY 10022.3298
212.583.9600

Attorneys for Defendant
PETCO ANIMAL SUPPLIES STORES,
INC.